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**OFFICE OF PETITIONS**

In re Application of :  
Toshiaki Iizuka : DECISION ON APPLICATION  
Application No. 10/815,506 : FOR  
Filed: March 31, 2004 : PATENT TERM ADJUSTMENT  
Attorney Docket No. 1232-5364 :

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed July 28, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be increased by one (1) day from one thousand (1000) days to one thousand one (1001) days.

The application for patent term adjustment is **DISMISSED**.

On July 10, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 1000 days. On July 28, 2008, applicants timely submitted the instant application for patent term adjustment<sup>1</sup>.

Applicants dispute the reduction pursuant to § 1.704(b) of 1 day.

Applicants state that the application is not subject to a terminal disclaimer.

Applicants request the removal of the reduction of 1 day on the ground that the response to the Office action mailed February 26, 2008, was filed timely on May 27, 2008. Applicants assert, in essence, that the three (3) month shortened statutory period for response to the Office action of February 26, 2008, fell on a federal holiday, Monday, May 26, 2008, and therefore, they had

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<sup>1</sup> PALM records show that the Issue Fee was received on July 29, 2008.

until the next succeeding business day, Tuesday, May 27, 2008, to file a timely response.<sup>2</sup>

Applicants were properly assessed a delay of 1 day for filing a response on May 27, 2008, to the Office action of February 26, 2008. Calculation of applicant's' delay is based on the date of receipt of the response in the Office. 35 U.S.C. § 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii).

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance is 1000 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup> The petition references a reply filed on "Monday, May 27, 2008." While the reply was in fact filed on May 27, 2008, said date fell on a Tuesday. Rather, Monday, May 26, 2008, was a federal holiday.